

# 50 Cases Put In Jeopardy By FBI Lab

2/14/97

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The Justice Department has identified at least 50 criminal cases where evidentiary problems created by questionable forensic analysis at the FBI laboratory may have resulted in improper prosecutions, Deputy Attorney General Jamie S. Gorelick said yesterday, acknowledging that the number of problem cases could go higher.

Gorelick's announcement casts new doubt on the competence and credibility of the once-renowned FBI forensic facility. Just last week, FBI executives said no criminal cases had been compromised by the lab's problems.

Justice Department lawyers are reviewing hundreds of criminal prosecutions identified in a still-sealed inspector general's report on the lab to determine whether there is evidence from the FBI facility that should have been given to defense lawyers.

Gorelick said Justice Department lawyers had asked state and federal prosecutors in the 50 cases identified so far to determine whether the findings about the lab's problems should be made available to defense attorneys. The problems included poorly trained personnel and cramped quarters that may have led to contamination of evidence.

Separately, the judge presiding in the March 31 trial of Timothy James McVeigh, accused of blowing up the Oklahoma City federal building, ordered the Justice Department yesterday to give defense attorneys a

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copy of the inspector general's draft report on the lab, a move the lawyers say could help them defend their client.

Gorelick's announcement was the first time the Justice Department has identified a specific number of prosecutions that could be jeopardized by the problems in the FBI laboratory.

The FBI learned of serious inadequacies in the lab nearly a decade before the Justice Department inquiry documented failings there, but the bureau took action to remedy those deficiencies only when it was threatened with public exposure, according to FBI and congressional documents.

The FBI has long promoted its laboratory to Congress and the public as a paragon of professionalism and incorruptibility, but the documents, obtained by The Washington Post, show that outside experts have questioned its most basic practices since at least 1980.

By 1988, FBI officials were concerned enough about conditions in the laboratory that they commissioned a study that concluded that the facility needed to be relocated because its inadequacies could not be fixed by renovation, according to FBI budget documents.

Critics and some defense attorneys claim the lab investigation has so damaged the bureau's reputation that it threatens to erode the FBI's crime-fighting abilities.

"The FBI laboratory has always enjoyed such a fine reputation that prosecutors could present its reports confident that they had absolute credibility with juries," said Julie B. Aimen, co-chair of the committee on forensic science at the National Association of Criminal Defense Lawyers. "Now it is no longer above reproach, and everything they have done over the past few years is going to be questioned when it is brought into a courtroom."

Some of the bureau's strongest supporters contend that the FBI's credibility now rests on the way it goes about identifying and correcting problems at the laboratory.

Sen. Charles E. Grassley (R-Iowa), chairman of the Judiciary subcommittee that oversees the FBI, defined the stakes this way: "The bottom line is that we must reestablish the confidence of the American public in federal law enforcement.

The public trust in the FBI has been shaken."

Asked to assess the steps taken by the FBI thus far, Grassley said in an interview that, "at times, the FBI seems more interested in image than product."

The FBI's position, repeated in several recent public statements is that "the FBI, acting on its own, began the complex process of laboratory improvements long before the Justice Department study began."

In defending the FBI's handling of the lab controversy, FBI Director

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Louis J. Freeh and other officials repeatedly have noted that before the Justice Department study the bureau had already planned to abandon the laboratory housed in the J. Edgar Hoover Building on Pennsylvania Avenue and build a facility on the grounds of the FBI training academy at Quantico.

The question of potential favoritism toward prosecutors in the FBI lab has been an issue for years. It was raised in a 1980 General Accounting Office report that criticized the bureau for continuing to staff its laboratory with investigative agents while all other federal laboratories had hired scientists and technicians to examine evidence and thus guarantee impartiality.

The bureau rejected the recommendation. John J. McDermott, a senior FBI official, told a congressional committee that the ideal lab specialist "stands in the shoes of the investigator in the field, whom he is serving." Although it has hired many scientists since then, law enforcement personnel continue to head most major departments at the FBI lab.

Personnel wasn't the only problem. FBI documents obtained by The Post show that in 1988 FBI officials were so concerned about conditions at the laboratory in the J. Edgar Hoover headquarters that senior bureau officials called in architectural and engineering firms to examine the problems. Those studies and another commissioned in 1992 con-



cluded that the facility had to be relocated.

An acute shortage of space has resulted in inadequate storage and examination facilities for evidence samples highly susceptible to contamination, the studies said. In addition, some samples must be carried through hallways used for the public tours of the Hoover building, increasing the risk of contamination, according to the documents.

"The current laboratory layout was originally designed with the interests of the public tour foremost," said a 1995 FBI document summarizing the case for relocation. "The result has proven to be terribly inefficient through the years and poses significant problems attendant to security and unauthorized access to controlled space from the tour route." More than a half a million people a year take the tour.

The FBI did not go to Congress seeking funds for a new laboratory until 1995, a year after the bureau conducted its own investigation of problems at the lab.

In 1995 testimony before a congressional committee, Freeh sought support for a new laboratory saying, "We have stripped away equipment, research and development over the last 10 years to make payroll, which is important, but we need some mechanics."

During this period, the FBI was not just making payroll, however. It completed several major infrastructure projects, including construction of a \$200 million computer center in West Virginia.

So far, the FBI has received \$97 million for construction of the new lab. With an additional \$32 million requested in the budget President Clinton submitted to Congress last week, FBI executives expect to break ground this summer at the FBI training academy in Quantico. Construction is scheduled to be completed by 2000, 12 years after the FBI officially concluded it needed to relocate the facility.

Another remedy to the lab's difficulties is the decision by Freeh to seek accreditation for the FBI facility by the American Society of Crime Lab Directors. The accreditation process allows outside experts to review examination techniques and practices and test the proficiency of lab personnel.

Freeh said last week that he ordered the accreditation, in January 1995, as soon as he learned that it had not been sought before. Weldon

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Kennedy, the FBI's deputy director, said the bureau had not sought outside approval before because, "frankly, we were not ready for accreditation."

FBI documents show that until Freeh began the accreditation process, the bureau had repeatedly rejected external scrutiny for nearly 20 years.

The FBI helped design a federally

funded proficiency testing program for state and local laboratories in 1975 and subjected its lab personnel to the testing regime briefly. The practice was stopped by FBI supervisors who argued that "the tests involved were an additional burden on bureau resources and not directly related to casework," according to a 1977 FBI report.

Under pressure from a congressional oversight committee, the FBI undertook limited testing of laboratory personnel in 1984. In 1989, a federal magistrate presiding in a case on the admissibility of DNA evidence said he found "serious deficiencies" in FBI procedures for checking the quality of work in the laboratory.

With the FBI still resisting outside scrutiny, Congress in 1993 ordered external reviews of practices and personnel in the bureau's DNA laboratory. Ultimately, that led to Freeh's decision to seek accreditation for the entire lab.

"DNA technology has been a great motivator for change in the entire field, and in some ways the FBI is now just trying to catch up," said Walter F. Rowe, professor of forensic science at George Washington University.

The ability to identify an individual's unique genetic coding or DNA was heralded in the mid-1980s as the most important new investigative tool since the advent of fingerprint identification 100 years ago. But unlike fingerprinting and many other crime lab techniques, DNA analysis did not emerge from a law enforcement context.

It was developed by medical researchers, which meant that for the first time in recent history the FBI lab was not taking the lead in the development and use of a new forensic technique.

"DNA forced them to confront the fact that you could not run a lab like a private club with no outsiders allowed to look in, but there is still resistance," said former representative Don Edwards (D-Calif.), who oversaw the development of the FBI's DNA analysis program prior to his retirement in 1994.

*Staff writer Jim McGee contributed to this report.*